## Definiteness of Charitable Bequests.

It is well settled that where a testator gives his trustees discretion to apply a bequest to charitable or other purposes as in their judgment may seem proper, it cannot be sustained as a charitable bequest. Sometimes the testator uses expressions in connection with charitable bequests that give rise to considerable conflict of judicial opinion as to whether the bequest was intended to be purely charitable, the additional words being mere redundancy of expression, or whether the testator intended the trustees to use discretion in applying the funds to charitable or to other purposes.

Thus, in the recent Scotch case of *Mackinnon* v. *Mackinnon*[1] the testator directed that the residue of his estate should be paid "to such charitable or philanthropic institutions, one or more, in Glasgow or the West of Scotland, as my trustees may select as in their opinion may seem most deserving." It was held, reversing the lower court, that this was to be construed as a bequest in favor of charitable institutions, and not void from uncertainty.

The controversy centered about the meaning of the word "philanthropic." The question was whether "philathropic" was meant by the testator as an alternative to "charitable," in which case the trust would fail because too indefinite, or whether the word was merely intended as equivalent or explanatory of the word "charitable." Certainly, "philanthropic" is not the equivalent of "charitable," for there are many philanthropic objects that could hardly be called "charitable;" as, for example, recreation grounds, and grounds devoted to sport which are not for the poorer classes, but are generally for rich and poor alike; or a gift to landowners affected by industrial depression whose incomes are reduced to a certain amount a year.[2] Other objects could easily be named that would clearly be philathropic, and to which the trustees would therefore be empowered to apply the fund, but which would not be charitable. The Court, however, held that "philanthropic" was used, not as an alternative but as explanatory of charitable, and expressly refused to follow the celebrated English case of *In re* MacDuff, where, under similar circumstances, "philanthropic" was held to be alternative to "charitable," and the bequest void from uncertainty. Thus we may fairly say that the Scottish law, in contradistinctions to English law, is so far favorable to charitable bequests that the Court will give effect to the testator's philan-

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[1] 1909 Session Cases, 1041.

[2] *In re* MacDuff, (1896) 2 L. R. Ch. 451.

thropic intentions to the extent of holding that the use of the term "charitable or philathropic" is a mere pleonasm. The Court in effect holds that the charitable purpose was so dominant in the testator's mind, that he did not intend to attach to the word "philathropic" its ordinary, or at least a separate meaning.

This is in line with other recent Scottish decisions. As in *Patterson's Trustees* v. *Patterson*,[3] where the testatrix directed her trustees to divide the residue of her estate "among such charities or benevolent or beneficent institutions" as they in their sole discretion should think proper, and this was construed as a bequest in favor of charitable institutions and sufficiently definite. The Court says: "I do not think that the testatrix had in her mind three distinct and separate kinds of objects which she intended to benefit: first, charitable objects; second, benevolent objects; and third, beneficent objects; but that she had in her mind only one kind of objects, viz., charitable objects, and that the others are merely used as exegetical of the earlier words"—*i. e.*, she described that class by three epithets, viz., charitable, benevolent, and beneficent.

And so in *Hays Trustees* v. *Bailee*,[4] where the testatrix directed her trustees to apportion and pay over the proceeds of the residue of her estate "amongst such societies or institutions of a benevolent or charitable nature in such proportions as they shall in their own discretion think proper," the Court sustained the bequest as charitable in the following language:

"Applying the true canon of construction applicable to bequests of this description, I come without difficulty to the conclusion that the testatrix meant to use 'charitable' and 'benevolent' as equivalent terms." And further,

"The question comes to be whether the objects of the bounty of this particular testatrix are sufficiently defined to enable a trustee of ordinary common sense and ordinary familiarity with the business of life to satisfy himself that he is selecting among the class pointed out to him by the the testator."

It is safe to say, therefore, that the principle of benignant interpretation of charitable bequests is applied more liberally in Scotland than in England; and in this country the tendency appears to be in favor of a more liberal construction of bequests of this nature.

There are several English cases that have given rise to considerable criticism, notably *Ommanny* v. *Butcher*,[5] where a trust

[3] 1909 S. C. 485.

[4] 1908 S. C. 1224.

[5] 1 Turn and Russ 260.

for a "private charity" was held void; and *Williams* v. *Kershaw*,[6] which determined that a trust for "benevolent, charitable and religious purposes" was not a good charitable use. The chief objection to the former case would seem to be that since the trustees could be required to account for a proper disposition of the funds, and could be dealt with for bad faith or for any breach of trust, the bequest contains all the requisites of a good charitable use; while in the latter case the context would seem to sufficiently indicate that a caritable use was intended, according to the most approved rules of interpretation applied to charitable bequests.

These cases are criticised at length by Mr. Boyle in his work on Charities, pp. 286-299, and his conclusion is that they are not sound expositions of the law. And in *Saltonstall* v. *Sanders*,[7] Mr. Justice Gray also severely criticised them and arrives at the conclusion that they are at least of doubtful authority in England, and certainly not law in Massachussetts; holding that the word "benevolence," had, under the Constitution and laws of the State, acquired a meaning equivalent to, and synonymous with, "charity." So also in Maine and New Hampshire the word "benevolent" may include purposes that may be deemed "charitable" by a Court of Equity.[8]

But in New Jersey the strict English rule was applied in holding that a gift in trust to be distributed "to benevolent, religious and charitable institutions" at the discretion of the wife of the testator was not a good charitable use, and that the word "benevolent" did not mean "charitable" by the context of the will (*Norris* v. *Thompson*, 19 N. J. Eq. 308).

*G. H. B.*

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## Has a Corporation the Implied Right to Purchase Its Own Stock?

As framed above, the question has received diametrically opposed replies.[1] It is settled in England[2] and in several jurisdictions in this country[3] that a corporation has no such implied

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[6] 1 N. Y. and Cr. 293.

[7] 11 Allen 462.

[8] *Goodale* v. *Mooney*, 60 N. H. 535; *Murdock* v. *Bridges*, 91 Me. 124.

[1] 4 Thomp. Corp., §4075.

[2] *Betterby* v. *Rowland Co.*, 2 Ch. 14 (1902); *Ashhurst* v. *Mason*, L. R. 20, Eq. 225 (1875).

[3] *Crandall* v. *Lincoln*, 52 Conn. 73 (1884); *Olmstead* v. *Vance Co.*, 196 Ill. 236 (1902); *Currier* v. *Lebanon Co.*, 56 N. H. 262 (1875); *State* v. *Oberlin Ass'n.*, 35 Ohio 258 (1878).